**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**LAND ACQUISITION REFERENCE NO. 4 OF 1993.**

Special Land Acquisition Officer (4)
B.S.D., D.N.Road, Andheri (West),
Bombay 400 058.

Versus.

1. M/s.Majas Land Development
   Corporation, 83, Jolly Maker,
   Chamber II, Nariman Point,
   Bombay 400 023. .., Claimants.

and

2. The Executive Engineer,
   Road Development Divn.IV,
   Andheri P.W.D., D.N.Road,
   Andheri (W), Bombay-58. ... Acquiring Body.

Ms.S.M.Dandekar, A.G.P. for the SLAO and the Acquiring Body.

Shri Rajesh Shah with Ms.R.R.Matkar for the Claimant.

**CORAM : ABHAY S.OKA, J.**

**DATED : 6th, 7th and 22nd August 2007.**

**ORAL JUDGMENT:**

1. Submissions were substantially completed on the last date. Today I have heard further submissions of the learned Counsel appearing for the parties.

2. This reference is under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act of 1894"). The acquired land subject matter of

the present Reference is survey No.11, Hissa No.2 and Survey No.13 Hissa No.2 admeasuring 19,495.90 sq.meters situated at village Majas, Taluka Andheri, District Bombay Suburban. The acquisition of the said land is for construction of Jogeshwar-Vikhroli Link Road. A notification dated 27th August 1975 was issued under sub-section (2) and (4) of section 126 of the Maharashtra Regional and Town Planning Act, 1966 read with section 6 of the said Act of 1894. The notification was published in the Maharashtra Government Gazette dated 9th October 1975. Thus in view of sub-section (2) of section 126 of the said Act of 1966, the relevant date for determination of the market value is 9th October 1975.

3. The Award under section 11 of the said Act was made on 24th may 1980 by the Special Land Acquisition Officer. The Special Land Acquisition Officer offered market value at the rate of Rs.25/- per sq.meter to the Claimants. The Special Land Acquisition Officer also offered solatium at the rate of 15% per annum. It must be noted here that the claim made by the Claimants under section 9 of the said Act was at the rate of Rs.60/- per sq.yard. In the present reference under section 18 of the said Act, the Claimants have claimed market value at the rate of Rs.60/- per sq.meter.

4. The Claimants filed affidavit in lieu of evidence of shri R.Ramchandra Pillai. The said Shri Ramchandra Pillai is a partner of the claimants-firm. The Claimants also filed an affidavit in lieu of examination-in-chief of Shri Harshad S.Maniyar, a Chartered Engineer. Apart from examining the said witnesses, the Claimants have placed reliance on the valuation report dated 28th March 2007 prepared by Shri H.S.Maniyar. The Claimants have placed on record several documents in support of their case.

5. The acquiring body in the present case is the Executive Engineer, Road Development Division-IV, Andheri PWD, Mumbai. The acquiring body has filed an affidavit in lieu of evidence of Shri Sanjay Raghunath Kurvey, Deputy Director of Town Planning Greater Mumbai. Along with the said affidavit, the original valuation report as well as certain original documents were also placed on record. The witnesses examined by the parties were cross-examined before the Court Commissioner appointed by this Court.

6. The learned Counsel appearing for the Claimants has taken me through the documents and evidence on record. The learned Counsel for the Claimants has relied upon the evidence of the witnesses and the valuation report submitted by Shri H.Maniyar. He has

placed reliance on the Award made under section 11 of the said Act by the Special Land Acquisition Officer on 31st January 1975. The said Award (Exhibit "F") in case No.LAQ/136 is in respect of land bearing Survey No.63(part), 65A/1 (part), and 65A/2 (part) of village Majas. He pointed out that the Land the subject matter of the said Award is comparable to the acquired land which is the subject matter of this reference. He pointed out that the Special Land Acquisition Officer valued the land subject matter of the said Award at Rs.45/- per sq.meter. He pointed out that the owner of the land which is the subject matter of the Award bearing LAQ No.136 had filed a Reference under section 18 of the said Act in this Court. He relied upon the order passed in the Reference by which the market value was fixed at Rs.49.50 per sq.meter. He pointed out that in case of award LAQ-136, the notification under sub-sections (2) and (4) of section 126 of the said Act of 1966 was issued on 26th march 1971 and the same was published in the Official Gazette on 3rd February 1972. He pointed out that considering the fact that the relevant date in the said case was of the year 1972, the market value of the year 1975 will have to be determined. He placed reliance on a decision of the Division Bench of this Court in Appeal No.164 of 1997 by pointing out that this Court has accepted the fact that there is a steep increase in the market value of the

immoveable property in the city of Mumbai. He pointed out that the witness examined by the acquiring body has placed reliance on two awards under section 11 of the said Act made on 23rd March 1997 and 31st March 1978. He pointed out that in respect of the Award dated 23rd March 1997 (Case No.LAQ/SR/43 Majas 1 & 2) the Special Land Acquisition Officer fixed the market value at the rate of Rs.25 per sq.meter. He pointed out that the acquiring body has relied upon the said Award by pointing out that the same relates to the land which is comparable with the acquired land in the present case. He invited my attention to the fact that in case of the said Award a reference was filed being Land Acquisition Reference No.34 of 1977 in this Court which was decided on 29th April 1987. He submitted that this Court fixed market value at the rate of Rs.38/- per sq.meter. He pointed out that the land subject matter of the said Award is situated far away from the Western Express Highway as compared to the acquired land subject matter of the present reference. He, therefore, submitted that even going by the sale instance in the form of the said Award relied upon by the acquiring body, the Claimant will be entitled to the market value at the rate of at Rs.38/- per sq.meter. He pointed out that the acquiring body itself relied upon the said Award bearing No.LSQ/SR/43/Majas.

7. The learned Government Pleader submitted that the land which is the subject matter of the Award bearing No.LAQ/136 is very close to and abutting the Western Express Highway. She pointed out that the land has a direct frontage and access to the Western Express Highway, whereas the acquired land is at some distance from the Western Express Highway. She submitted that there is no direct access or frontage to the acquired land on the Western Express Highway. She submitted that the judgment in Land Acquisition Reference No.14 of 1977 arising out of the Award bearing No.LAQ/136 is by consent. Similarly she submitted that the order passed in Land Acquisition Reference No.34 of 1997 is passed by the consent of the parties and therefore, the market value cannot be determined on the basis of the said judgment. She pointed out that the land subject matter of the Award LAQ/136 is far more superior than the acquired land subject matter of the reference. He pointed out that there is a cemetery very close to the land under acquisition. Moreover she submitted that the area of the land subject matter of LAQ/136 is 2608.90 sq.meters and the area of the acquired land is six times more than the area of the land subject matter of LAQ/136. She, therefore, submitted that no case is made out for grant of enhancement in market value.

8. The learned Counsel for the Claimants in

rejoinder submitted that there is no difference between the land having area of more than 2500 sq.meters and a smaller land considering the Rules regarding the FSI contained in the relevant Development Control Regulations. He submitted that the Claimants are entitled to the enhancement in compensation.

9. With a view to appreciate the submissions made by the learned Counsel appearing for the parties, it will be necessary to refer to the evidence on record.

10. Shri R.Ramchandran Pillai has stated in his affidavit in lieu of examination in chief that he has been a partner of the Claimants-firm since its inception i.e. from the year 1964. He has stated that since 1964 he has been in the overall supervision of all the immoveable properties including the acquired land. He has stated that in the year 1975 he was personally acquainted with the situation, description and status of the acquired land as he used to visit the acquired land on weekly basis.

11. He has stated that the acquired land was a levelled land and did not require any filling whatsoever since it was a flat and hard land. He has stated that the acquired land was abutting the Western Express Highway and access to the acquired land was through an

internal road which was joined to the Western Express Highway and Jogeshwari Station Road. Jogeshwari Station Road was bifurcated under the Western Express Highway, one road leading to the acquired land and the other road leading to the squatters colony. He has stated that Jogeshwari Station was 700 meters from the above bifurcation and the acquired land was situated at a distance of 325 meters from the said bifurcation. He stated that access to the acquired land was a developed road which was tarred and asphalted. He has stated that in the year 1975, the Bombay Electricity and Transport Undertaking buses used to ply between Jogeshwari Railway Station to the bifurcation under the Western Express Highway. According to him the stretch between the bifurcation and the acquired land could be covered by a four minutes walk or by an auto rickshaw. He has stated that the road leading to the Railway Station was fully developed with residential buildings, shops and commercial premises on either side of the Station Road.

12. He has stated that to the north of the acquired land there was a factory of S.C.Brothers, Mechanical and Structural Engineers which employed more than 400 workmen. He has stated that towards north-west there is Satguru Nanak Industrial estate, which houses various industrial and small scale industrial units. He has stated that to the north east of the Western Express

Highway and beyond the acquired land, there is SRP Force Unit No.8 and residential-cum-training institute housing Police personnel all throughout the year. He has stated that on the same location there is a residential cum commercial establishment of Aarey Colony. According to him, the acquired land had a frontage of 217 meters on the Western Express Highway and had a very high degree of commercial potential for display of sign boards. According to him the acquired land was located in a well developed locality with residential buildings/complexes of commercial and industrial premises. He stated that the acquired land was encumbered with unauthorised structures with shanties constructed by attaching tarpaulin to four bamboo sticks by unauthorised occupants and encroachers who were not the tenants of the Claimant. According to him 22 tenements belonging to one Smt.Laxmibai Nayak were standing on the acquired land and were constructed with N.A. permission. He stated that the said 22 tenements belonged to the Claimants. He has stated that the Claimants were neither aware of any application for N.A. permission made by the said Laxmibai nor consented to any N.A. permission being granted to the said Laxmibai Nayak.

13. Thereafter the witness referred to the Award in LAQ-136 declared by the Special Land Acquisition Officer. He stated that the land subject matter of the

said Award was located at a distance of 350 meters from the point from which Jogeshwari-Vikhroli Link Road starts from the Western Express Highway towards the southern side of the acquired land. He stated that the distance between the acquired land and the land subject matter of the said Award was only 350 meters. The said witness has been cross-examined by the learned Government Pleader and it will be necessary to refer to the cross-examination of the said witness.

14. In the cross-examination Shri Ramchandran Pillai has stated that the acquired land was a non-agricultural land. He, however, stated that he was not having any documentary evidence to that effect. He admitted that at that time the land was occupied by 728 unauthorised structures/hutments and the acquired land was heavily encroached upon. He stated that the total area of the acquired land was 19495.9 sq.meters and it was a big plot of land. When his attention was drawn to a map on record, he stated that survey No.11/2 starts from Western Express Highway. However, survey No.11 has not been mentioned specifically on the plan. He thereafter stated that survey No.13 starts from the boundary line now marked as "A" and "B". However, the starting point to this effect has not been shown exactly in this map. When a question was asked to him as to whether the distance between Survey No.13 and Western Express

Highway is about 716 meters, he stated that it was not possible for him to state the exact distance. He stated that the distance between Jogeshwari Railway Station and Western Express Highway is approximately 700 meters and below the Western Express Highway there is a sub-way and from the sub-way the acquired land is at a distance of 325 meters. He reiterated that the statement made in the affidavit that the distance from the Western Express Highway to the acquired land is four minutes walk. He stated that the acquired land is a very large portion of the land. He stated that the total area of the land held by the Claimants bearing Survey No.11 Hissa No.2 was 73,500 sq.meters out of which a large portion has been acquired for the purpose of construction of Jogeshwari-Vikhroli Link Road.

15. He stated that originally the land covered by Survey No.13 (part) and survey No.11/2 were agricultural lands and subsequently they were converted into non-agricultural land under the orders of the Collector of Mumbai. However, he was not having any documents to show that the lands were converted into non-agricultural land. He stated that Western Express Highway is almost on the same level as that of the acquired land. He stated that there was an approach road from Jogeshwari Railway Station to acquired land even before construction of Western Express Highway.

16. He stated that the distance between Jogeshwari Railway Station and the Squatters' colony is one kilometer and the squatters colony is located at a distance of 3 to 4 furlongs from the acquired land. He admitted that there was a cemetery near the acquired land and near the Western Express Highway. He admitted that there was no direct access to the acquired land from the Western Express Highway and the access was through the internal road. He denied the correctness of the suggestion that there was no commercial value to the acquired land before the construction of Jogeshwari-Vikhroli Link Road. After referring to a plan on record, he admitted that the cemetery shown in the plan comes first which is situated on the Jogeshwari Vikhroli Link Road adjacent to the Western Express Highway. He denied the suggestion that the industries referred to in paragraph 8 of his affidavit in lieu of evidence were emitting pollutants and were not conducive for residential purpose.

17. He admitted that the area of the land subject matter of the Award LAQ/136/75 was a small area compared to the size of the acquired land. In response to a question, he stated that the entire land covered by conveyance dated 3rd March 1973 is a non-agricultural land. When a question was asked as to whether the names

of Khemchand Gorumal and P.D.Hinduja appear as lessees in the record of rights, the witness pleaded ignorance about it.

18. In the further cross-examination he denied the suggestion that the encroached land will fetch lesser price than an open piece of land. He stated that it not correct to say that there are no purchasers to purchase the land encroached upon as compared to the purchasers for open land. His attention was invited to the Award dated 29th April 1987 (Exh.H). A suggestion was given that the said land subject matter of order dated 29th April 1987 was an open piece of land. He denied the correctness of the suggestion. A suggestion as given to the witness that indenture dated 3rd March 1972 is a freehold land with reversionary interest to the vendors who are tenants in common. However, he denied the correctness of the said suggestion.

19. It must be noted here that the Claimants filed an affidavit of evidence of Shri Harshad Sunderlal Maniar on 9th April 2007. Shri Sanjay Kurvey a witness examined by the Acquiring Body filed an affidavit on 17th July 2006. Before cross-examining the expert appointed by the claimants, the Cross-examination of Shri Sanjay Kurvey was recorded. However, for the sake of convenience I am firstly referring to the evidence of

Shri Harshad Maniar, an expert appointed by the Claimants. Shri Maniar stated that he was an Engineer, Surveyor and Registered Estate Valuer. He has set out his educational qualifications in the affidavit. He stated that on instructions of the claimants he inspected the acquired land and prepared his valuation report on 28th March 2007. He proved the correctness of the said valuation report. According to him, the market value of the acquired land on 9th October 1975 i.e. relevant date is Rs.67/- per sq.meter. He relied upon the instance of land subject matter of LAQ/136. The said expert witness has been extensively cross-examined by the Government Pleader. It will be necessary to refer to the cross-examination of Shri Maniar. He admitted that he had seen the land on 17th March 2007. He stated that he had visited the suit land on a number of times, but not with a view to prepare valuation report. A specific question was asked to the witness whether he is in a position to say what was the nature and description of the acquired land in the year 1975. The response of the witness was that for the purpose of preparing valuation report he had referred to the affidavit of Shri R.R.Pillai, the first witness of the Claimants in so far as the situation and location of the acquired land is concerned.

20. He was given a suggestion that though the land

was acquired in the year 1975 possession of the land was not taken till 1995 as the land was fully encroached upon. A question was asked to the said witness whether he was aware that the acquired land was purchased under a registered conveyance dated 31st March 1973, the witness replied that he had not gone through the document and he would go through the document and answer the question on the next date.

21. On the basis of opinion expressed in valuation report, a question was asked to the witness as regards allowance minus 10%. The question asked and the answer given are as under:

> "23. With regard to the area of the land under acquisition, you have given allowance minus 10%. I put it to you that the allowance made is much less. It should have been in the range of 25% to 30%.
>
> A. I do not agree. The allowance is only for the quantity allowance and not for any other purpose."

He also accepted that there was a difference of about 8 times in the area of the land under sale instance i.e. Award bearing No.LAQ/136 and the land under acquisition.

When a question was asked whether for a smaller plot, price fetched is higher than a bigger plot, his reply was that as per the Development Control Regulations if the size of the plot is more than 2500 sq.meters, then no deduction is required for compulsory open space and the access roads. He stated that since the area of the land under sale instance (LAQ/136) is more than 2500 sq.meters, no allowance has been made between two lands having different areas.

22. Shri Maniar candidly admitted that he had no personal knowledge about the land under acquisition. He also admitted that if one buys a quantity in bulk, the price will be less. About the rise in valuation of the land, he stated that looking to the prices of land from 1972 to 1975, rise in value of land was much higher than 12.5% per annum. He stated that he had adopted the rate on the lower side because he was experienced. He stated that the cost of land as shown in conveyance dated 31st March 1973 by which the acquired land was purchased by the Claimants was approximately at 59 paise per sq.meter. He stated that there were encroachments on the land subject matter of the award LAQ/136 as well. He stated that the acquired land subject matter of the Award LAQ-136 was closer to the Jogeshwari Railway Station than the land subject matter of this reference. He stated that the land under acquisition was at a

distance of 810 meters as the crow flies from Jogeshwari Railway Station. He stated that it takes about 15 minutes to go to the acquired land from Jogeshwari Railway Station.

23. About his opinion that frontage of the acquired land abutting Highway was 217 meters, he stated that 100 feet frontage is correct width of the road and not 217 meters. He stated that the distance between the acquired land and the land subject of the Award LAW/136 was 400 meters. He accepted that the land subject matter of the Award LAQ-136 has a frontage on both the sides of the Western Express Highway and the width of the frontage is 56 feet i.e. about 18 meters. He stated that both the lands were having the same potential.

24. Now coming to the cross-examination of Shri Kurvey, as stated earlier, it must be pointed out that his affidavit of examination-in-chief was filed even before the affidavit of examination-in-chief of Shri Harshad Maniar was filed by the Claimants. The cross examination of the said witness is on Exhibit R4 and R5, the two awards relied upon by him. He admitted that in his valuation report he relied upon the award of the Special Land Acquisition Officer as he found the same to be correct. He admitted that the Award LAQ/136 (Exhibit

F) relied upon by the Claimants was a relevant sale instance for the purpose of comparable Sale Valuation Method. He admitted that though the area of the land subject matter of Exhibit "F" was smaller than the area of the acquired land, both the lands can be compared. He admitted that the land which is subject matter of Award LAQ/136 can be compared with the acquired land with necessary allowances and deductions. He stated that considering the size of the land subject matter of LAQ/136, while making valuation of the acquired land there will have to be a deduction of 20% to 25%. In response to a later question, he stated that deduction of minus 2% will be adequate. He admitted that 10% rise per year is generally followed in case of valuation. He stated that the Land Acquisition Officer has correctly decided not to compare the land subject matter of LAQ/136 with the acquired land as the said land was a vacant land and the acquired land was fully occupied by 728 hutments.

25. The opinion of Shri Harshad Maniar is based on the sale instance of Award LAQ/136 and the Judgment in Reference under section 18 of the said Act arising out of the said Award delivered by this Court. It is a well settled law that an Award made by the Collector under section 11 of the said Act of 1894 or an Award of the Court under section 18 of the said Act of 1894 in

respect of a comparable land is certainly relevant for determining the market value of the acquired land.

26. The Award LAQ/136 relates to the land bearing Survey No.63(part), 65A1 (part), 65A2(part) of the same village Majas. As pointed out earlier, the relevant date in case of the said Award is 3rd February 1972. A map which is produced and proved by Shri Sanjay Kurvey discloses the location of the land subject matter of the said Award. The Western Express Highway is passing through the said land subject matter of the Award and therefore, both the portions of the land forming part of the said Award have a direct frontage and opening on the Western Express Highway. The total area of the acquired land which is the subject matter of this Reference is 19495.9 sq.meter. The Claimants have been accepted to be the owners and the compensation has been awarded to the Claimants in respect of the said area. Thus the area of the acquired land is six times more than the area of the land covered by LAR/136. It must be noted here that there were 728 structures on the acquired land subject matter of this reference. The evidence on record and the cross-examination of Shri R.R.Pillai shows that there is a cemetery abutting the acquired land. The land which is the subject matter of LAQ/136 is at a distance of 300 meters from the said cemetery.

27. It will be necessary to refer to the affidavit in lieu of examination-in-chief of Shri R.R.Pillai. In the said affidavit of examination-in-chief, he has stated that the acquired land has a frontage of 217 meters on the Western Express Highway. Shri Maniar, the expert examined by the Claimants has been also cross examined on the said aspect. In response to question No.53, he stated that the width of the frontage of the acquired land is 100 feet and not 217 meters. He has also admitted that the acquired under LAQ/136 has frontage on both the sides of the Western Express Highway having width of 56 feet. He admitted that the land subject matter of LAQ/136 is located at a distance of 400 meters from the land subject matter of the present reference. He admitted that the land subject matter of LAQ/136 is nearer to Jogeshwari Railway Station as compared to the land under acquisition in the present case.

28. As regards the difference in the area is concerned, it is stated in the cross-examination that if the area of the plot is more than 2500 sq.meters no deduction is required to be made for compulsory open space and access road.

29. Shri R.R.Pillai who had an occasion to see both the acquired land and the land subject matter of LAQ/136

in the year 1975 has stated that there is no direct access to the acquired land from Western Express Highway. He also stated that the land subject matter of LAQ/136 was nearer to Jogeshwari Railway Station. Shri Pillai stated that the acquired land was encumbered with unauthorised structures. These unauthorised structures were shanties constructed by attaching tarpauline to four bamboo sticks by the unauthorised occupants and encroachers. He has stated that there were 22 tenements of one Laxmibai Nayak standing on the acquired land which were constructed without N.A.permission.

30. As far as access from Jogeshwari Railway Station is concerned in the cross-examination Shri Pillai stated that in order to reach the acquired land one has to walk from Jogeshwari Railway Station to the point where the sub-way was constructed and from the point of sub-way if one goes towards north to the acquired land, one has to cover a distance of 325 to 350 meters. He has stated that there is also an approach road from the sub-way towards south-east which was known as Squatters' colony road. He stated that the sub-way was constructed in or about 1970.

31. Reliance was placed by the learned Counsel appearing for the Claimants on certain admissions of Shri Kurvey in cross-examination. It was pointed out

that in response to a question in the cross-examination Shri Kurvey stated that the land subject matter of LAQ/136 can be compared with the acquired land. My attention was invited to the answer given by Shri Kurvey to question No.51 in which he has stated that the land subject matter of LAQ/136 is a relevant comparable instance. As pointed out earlier, the relevant date in case of LAQ/136 is of 1972 and therefore, questions have been asked to Shri Kurvey regarding the computation to be made for determining the market value of the year 1975 on the basis of the market rate as evidenced by the said Award. My attention has been invited to answer to question No.63 by Shri Kurvey, where he admitted that the deduction of minus 2% will be adequate from the rate fixed by Award LAQ/136 while valuing the acquired land. It must be remembered that the evidence of Shri Kurvey as well as evidence of Shri Maniar is nothing but an opinion evidence. On the basis of the said evidence as well as other material on record, it will have to be seen whether the land subject matter of LAQ/136 is a comparable land.

32. As stated earlier the area of the land subject matter of the said sale instance LAQ/136 is very small as compared to the area of the acquired land subject matter of this reference. Moreover the land subject matter of the sale instance has a direct frontage on

both the sides of the Western Express Highway. There is a cemetery abutting the acquired land. The said cemetery is, however, at a distance of 300 meters from the land subject matter of the said sale instance. There were few structures on the land subject matter of the said said instance whereas the acquired land was encumbered with 728 hutments. The land subject matter of LAQ/136 is closer to the Jogeshwari Railway Station than the acquired land. If all these relevant factors are considered, it is very difficult to accept the case of the Claimants that the land which is the subject matter of LAR/136 is comparable with the acquired land subject matter of this reference. Consequently the said Award bearing No.LAQ/136 as well as the judgment of this Court in land acquisition reference No.14 of 1077 is not relevant for determining the market value of the acquired land.

33. The Claimant as well as the acquiring body have produced on record a copy of the Award (Exhibit R-4) in case LAQ/SR/43/Majas 1&2. It must be noted here that the land subject matter of this reference as well as the land subject matter of the said award bearing No.LAQ/SR/43 (hereinafter referred to as "Award 43") were notified for acquisition by the same notification dated 27th August 1975 published in official Government Gazette dated 9th October 1975. The said Award relates

to a large area of 32177.60 sq.meters. The Award in the case was made on 23rd March 1977. It appears that a reference under section 18 was filed in this Court by one of the claimants who was granted compensation in respect of the area of 11985.90 sq.meters by the said Award. The said land acquisition reference was disposed of by this Court by order dated 29th April 1987 by fixing the market value at the rate of Rs.38/- per sq.meter.

34. At this stage it will be necessary to refer to the affidavit of examination-in-chief of Shri Kurvey as well as his valuation report in which a reference has been made to the Award 43 as well as another Award dated 31st March 1978 in respect of the land covered by the same notification, where the rate awarded is Rs.25/- per sq.meter. The said two awards have been marked Exh.R-4 and Exh.R-5 respectively. In the cross-examination of Shri Kurvey there is a reference to the said two Awards. In response to question No.43 Shri Kurvey admitted that the lands covered by Exh.R-4 and R-5 are the subject matter of the same notification dated 27th August 1975. A specific question was asked to Shri Kurvey on the said Awards. The question was whether he agrees that the Award passed in respect of the land subject matter of the same notification can be used as an instance for determination of market value. He answered the said

question in the affirmative. At Exh.R-6, there is a map produced on record showing the location of land subject matter of acquisition in Award-43. It must be noted here that the acquisition of the land subject matter of the present reference as well as the the said land subject matter of Award 43 is for construction of Vikhroli-Jogeshwari Link Road which connects Vikhroli to Jogeshwari at the Western Express Highway. The land subject matter of this reference is the front portion of the said road which joins the Western Express Highway. The land subject matter of Award 43 is abutting the acquired land on its rear side. Hence the acquired land is comparable with the land subject matter of Award-43. It must be noted here that the Award-43 at Exh.R-4 is relied upon by the Special Land Acquisition Officer as well as the acquiring body for supporting the rate fixed in respect of the land subject matter of this reference at the rate of Rs.25/- per sq.meter. In view of the decision of the Apex Court in the case of SLAO v/s. Sri Siddappa Omanna Tumari (AIR 1995 SC 840), Award-43 cannot be ignored for determining the market value as the land subject matter of the Award is notified under the same notification by which the land subject matter of this reference was notified. The Apex Court in the said decision has held that the award made by the Collector in respect of the land covered by the same notification cannot be ignored by the Court while

determining the market value of the other land acquired by the same notification. It will be necessary to refer to the order dated 29th April 1987 passed by this Court LAR No.34 of 1977. It appears that the reference was disposed of in terms of the Minutes of Order signed by the Counsel for the Claimants and the Counsel for the Special Land Acquisition Officer. By the said order, the market value was fixed at Rs.38 per sq.meter.

35. The learned Counsel for the acquiring body tried to submit that the judgment and order of this Court dated 29th April 1987 is not relevant as the market value at the rate of Rs.38 per sq.meter has been fixed by consent. The said contention cannot be accepted for more than one reason. Firstly the order dated 29th April 1987 is an order passed by this Court in a reference under section 18 which is an Award made by this Court fixing the market value of the acquired land. Secondly, it must be stated here that the Special Land Acquisition Officer was a party and was represented before this Court. The Special Land Acquisition Officer also accepted the rate of Rs.38/- per sq.meter in the said reference. Thus the market value of the land fixed in Award-43 at the rate of Rs.25/- per sq.meter was enhanced by this Court to Rs.38/- per sq.meter. Therefore, the said order passed in the reference under section 18 of the said Act of 1894 is certainly relevant

for determining the market value of a comparable land.

36. As stated earlier, the land subject matter of the said Award-43 is abutting the acquired land in the present case. The total area of the land covered by the said Award 43 is about 31,500 sq.meters. Thus the said award relates to fairly a large area as in the present case. Therefore, the said Award as well as the award in the Land Acquisition Reference 34 of 1977 is certainly in respect of a land which is comparable to the acquired land.

37. The question is what are the other factors which are to be taken into consideration for arriving at the market value of the acquired land on the basis of the Award-43 Exh.R-4 and the decision of this Court (Exh.G). A perusal of Exh.R-4 shows that the land was open land as there is no reference to any structure. It must however be stated that the acquired land subject matter of the present reference is closer to Western Express Highway as compared to the land subject matter of Award 43. A negative factor in respect of the acquired land is the existence of 728 structures. The said negative factor is balanced by the fact that the land subject matter of Award-43 is far away from the Western Express Highway and on the other hand the acquired land had a frontage of atleast 100 feet on the said Highway.

Though it is possible to argue that the value of the acquired land subject matter of this reference will be more than the land subject matter of Award-43 (Exh.R-4), considering the factor of existence of 728 structures, in my view, the market value of the acquired land will have to be fixed on par with the market value fixed by this Court in respect of the land subject matter of Award-43 (Exh.R-4). The Apex Court has noted in the case of Krishna Yachendra Bahadurvaru v/s. Special Land Acquisition Officer (AIR 1979 SC 869) that estimation of market value of the acquired land depends largely on the evaluation of many imponderables and hence it must necessarily be to some extent a matter of conjecture or guess. Therefore, considering all the aspects, the market value of the acquired land will have to be fixed at Rs.38/- per sq.meter as per the order of this Court in LAR No.34 of 1977.

38. Before parting with this judgment, a submission made by the learned Counsel for the acquiring body will have to be noted. The submission is based on the documents which are marked as Exhibits R-16, R-17 and R-18. A submission is made on the basis of the said documents that the acquiring body was required to rehabilitate occupants of structures on the acquired land by spending a sum of Rs.10,000 per structure. The contention raised is that necessary deduction will have

to be made in the compensation payable to the Claimants. Apart from the fact that considering the provisions of section 23 read with section 24 of the said Act, the said deduction cannot be made, the amount has been paid on the basis of the policy decision taken long after the award under section 11 was made. The payment of the said amount for rehabilitation of the occupants has no bearing on the fixation of the market value as of 9th October 1975. The market value of Rs.38/- per sq.meter has been fixed considering the presence of 728 structures. The documents which are referred to above show that the decision to rehabilitate occupants of the structures was taken in the year 1989. The State Government could have always adopted due process of law by taking recourse to section 16 of the said Act of 1894 for evicting unauthorised occupants. The amount of Rs.10,000/- per structure is spent as per the policy of the Government. Therefore, the said argument deserves to be rejected.

39. While granting enhancement in market value, statutory benefits as applicable to the Claimant will have to be paid on the basis of the 1984 amendment carried out to the said Act of 1894.

40. After dictation of the Judgment, the final order was not passed to enable the Claimants to

submit a calculation of the amount payable to them. The learned Counsel for the Claimants has handed over a calculation sheet containing calculation of the amount payable to the Claimants calculated as on 13th August 2007. The learned Government Pleader appearing for the acquiring body as well as the Special Land Acquisition Officer states that the calculations have been verified by the concerned Aval Karkoon and he has found the calculations to be correct. The calculation sheet is marked "X" for identification and is taken on record.

41. The Court Commissioner appointed to record evidence has submitted a memorandum of the fees payable to him. I am satisfied that the amount mentioned therein is reasonable. Out of the total amount of Rs.37,720/- payable to the Commissioner, the Claimants have already paid a sum of Rs.7,000/- to the Court Commissioner. The balance amount will have to be initially paid by the Claimants to the Court Commissioner. The amount paid to the Court Commissioner will be included in the bill of costs.

42. Hence the following order is passed:

(i) Land Acquisition Reference is partly allowed.

(ii) It is declared that the Claimants are entitled to the market value of the acquired land at the rate of Rs.38/- per sq.meter.

(iii) It is declared that the Claimants are entitled to the statutory benefits such as interest under section 23(1-A) and solatium under section 23(2) of the said Act of 1894. On the enhanced amount of compensation, the Claimants will be entitled to the interest at the rates of 9% and 15% respectively as payable under section 28 of the Land Acquisition Act, 1894.

(iv) The Claimants will be entitled additional compensation of Rs.19,52,583.40 as on 13th August 2007 together with further interest payable at the rate of 15% per annum as per section 28 of the Land Acquisition Act, 1894 on the sum of Rs.2,92,271.72, on additional solatium of Rs.1,54,967.39 ps. and on the interest under section 23(1-A) of the said Act of 1984 in the sum of Rs.3,93,855/-.

(v) The Court Commissioner will be entitled to total remuneration of Rs.37,720/- out of which a sum of Rs.7,000/- has already been paid to him by the Claimants. The Claimants shall pay balance

amount of Rs.30,720/- to the Court Commissioner within a period of eight weeks from today. The charges paid to the Court Commissioner shall be included in the bill of costs.

(vi) The Claimant will be entitled to proportionate costs of the reference from the Special Land Acquisition Officer.

(vii) Time of four months is granted to the State Government to comply with the Award.

**Judge.**